

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ANGELO FEARS	:	CASE NO: 1:01-CV-183
Petitioner	:	Judge Walter H. Rice
- vs -	:	Magistrate Judge Michael R. Merz
MARGARET BAGLEY, WARDEN	:	<u>MOTION FOR</u>
Respondent	:	<u>EXTENSION OF</u>
	:	<u>TIME TO FILE OBJECTIONS</u>
	:	<u>TO REPORT AND</u>
	:	<u>RECOMMENDATIONS</u>

Comes now the Petitioner, and moves this court for an order permitting him an additional sixty days (or however long the court will allow) to file his objections to the Magistrate's Report and Recommendation all for the reasons more fully set forth herein.

MEMORANDUM IN SUPPORT

Petitioner's lead habeas counsel has been overwhelmed. Petitioner's counsel had no control over or notice of when this court would file its Report and Recommendation, thus as a solo practitioner, he continued to accept CJA appointments and other private cases. Thus counsel became obligated prior to the courts Report and Recommendation to defend Defendant Tracy Marshall (*United States v. Marshall, et al.*,) in a multi-defendant drug conspiracy (more than 9000 pages of discovery; six CD discs); defend Mary J. Donaldson (*United States v. Davidson, et al.*,) (more than 3000 pages of discovery on three discs). The motion deadline for Defendant Donaldson is January 30, 2006, the same deadline as this court established, upon Petitioner's counselor's suggestion for an extension of time previously sought and received.

Due on February 3, 2006 are expert's Curriculum Vitae and reports in the habeas case of *Issa v. Bradshaw*, with reports and vitas coming from three experts and a report on why a fourth expert is "unavailable" which necessitates scanning, faxing and conferencing with these experts in an effort to meet the court's deadline and then to prepare them for the evidentiary hearing now set for March 6, 2006.

During the same time as this preparation was underway, counsel was likewise solely responsible for the filing of the Sixth Circuit brief in *United States v. Ferguson*, (final brief due on January 6, 2006) and the assistance on the Sixth Circuit case of *State v. Doe*.

In addition, counsel was responsible for *United States v. Nastashia Friday*, *United States v. Silva*, (negotiated pleas, proffers and presentence investigation conferences on both); *United States v. Orozco*¹; *United States v. Roberto Ruiz-Roman*²; *United States v. David Ray Hill*³; *Shore v. Brown Publishing Company*,⁴; *Ubaike v. Berryhill*,⁵ among the numerous other misdemeanor and lesser felony cases that have resolved by plea the last sixty days.

Counsel also committed to teaching at the University of Dayton Law School at or about the time that this court filed its Report and Recommendation, with the first class beginning on January 10, 2006.

¹ Presently set for trial on January 30, 2006 as a deadline for speedy trial

² At the request of Judge Walter H. Rice, counsel agreed to undertake a meeting and potential resolution of this messy matter, cleaning up for prior counsel and was informed on 1/18/06 that in fact the DEA, ICE and Assistant United States Attorneys for New York and Ohio would agree to a resolution proposed by defendant's counsel.

³ Motion to Suppress pending decision, trial date of February 13, 2006 just recently cancelled and continued by the joint request of the government and defense counsel while defense counsel attempts to secure a copy of the hard-drive and have a defense expert analyst forensically test the computer.

⁴ Response to Motion for Summary Judgment and nine other motions, due on January 30, 2006.

⁵ Trial now set for February 6, 2006, although negotiations are ongoing to settle the matter.

Counsel's days have been spent working ten hour days, going home, grabbing something to eat on the way home, and then working on the objections to the Report and Recommendation for periods of 1.5 to 3 hours. Weekends are spent with Saturday preparing for Tuesday's teaching assignment, and the remainder working on the objections to the Report and Recommendation and/or the other matters for which counsel is accountable.

In addition to the legal work, the undersigned continues as the Chairman of the Fundraising Committee for Mercy Manor, a transitional housing facility for women exiting jail or treatment, with the annual dinner to occur on March 16, 2006; a ½ day retreat is to occur on Saturday January 21, 2006 which will deprive counsel from four hours of working on the Report and Recommendation.

Based on the Report and Recommendation, the pleadings, which are cited time and again by the court as deficient, will need Petitioner's counsel to do what the court indicated it could not, pour over thousands of pages to fill in the gap. As counsel started to prepare for that task, it was discovered for whatever reason, that the Ohio Public Defender's Office in Columbus has the joint appendix and arrangements have been made to have the Appendix shipped to Dayton so that Petitioner's counsel can start the task of filling in the blanks called to the attention of counsel by the Court in the Report and Recommendation. How that task will be done even in sixty days is hard to envision, but counsel is committed to the task; Petitioner's life hangs in the balance.

Pursuant to Loc. R. 7.3(a), Counsel for Petitioner begged Mr. Stephen Maher, Assistant Ohio Attorney General via a voicemail message left today's date, for his consent to the extension; counsel has not heard back.

As this court is aware, there was a change in counsel during the pendency of the as Stephen Ferrell left the employ of the Ohio Public Defender.

For all the foregoing reasons, counsel asks the court to further extend the deadline for the objections to the Report and Recommendation so that Petitioner does not keel over attempting to be all things to all people.

Respectfully submitted:

s/Lawrence J. Greger
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was electronically served on Stephen Maher, Assistant United States Attorney.

s/Lawrence J. Greger
Lawrence J. Greger